INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes and regulations involved	2
Statement	2
Summary of argument	13
Argument:	
I. Petitioners lack standing under the test of *Hardin* v. *Kentucky Utilities Co.*, 390 U.S. 1, since Congress in passing the assignment provision involved did not have as a purpose protecting tenant farmers from economic pressure to assign federal farm benefits to secure payment of current farm-related costs	17
A. Unless petitioners satisfy the *Hardin* standard, they lack standing	18
B. *Hardin* requires that petitioners show not simply that Section 8(g) was intended to benefit their class in a general way, but that the Secretary's action threatens a specific interest of theirs which the statute was designed to protect	20
C. If the legislative history of Section 8(g) and 7 U.S.C 1444(d)(13) shows any purpose to protect small farmers from economic pressure to assign federal farm benfits that protection was not meant to extend to assignments related to their current costs of farming	22
II. The regulation defining the expenses of "making a crop" to include the cash rent cost of the land on which a crop is grown is a valid interpretation of the statutory phrase	28

364-636—69——1

Argument—Continued
A. Inclusion of cash rent costs is consistent with the statutory language and purpose ..... Page 28
B. The regulation permitting assignments to secure payment of cash rent is neither internally inconsistent nor prohibited by the Secretary's statutory obligation to "provide adequate safeguards to protect the interests of tenants and sharecroppers" 39
Conclusion 42
Appendix 43

CITATIONS

Cases:

Aetna Life Insurance Co. v. *Haworth*, 300 U.S. 227 .. 21
Alabama Power Co. v. *Ickes*, 302 U.S. 464 18
Associated Industries v. *Ickes*, 134 F. 2d 694, certiorari vacated as moot, 320 U.S. 707 20
Baker v. *Carr*, 369 U.S. 186 21
Commissioner of Internal Revenue v. *Glenshaw Glass Co.*, 348 U.S. 426 37
Driver v. *Maxwell*, 56 Ga. 11 ..... 25, 40
Federal Communications Commission v. *Sanders Bros. Radio Station*, 309 U.S. 470 20
Flast v. *Cohen*, 392 U.S. 83 21
Fribourg Navigation Co. v. *Commissioner of Internal Revenue*, 383 U.S. 272 35
Hardin v. *Kentucky Utilities Co.*, 390 U.S. 1 ..... 14, 17, 18, 20, 21, 22, 27
Helvering v. *Griffiths*, 318 U.S. 371 35
Helvering v. *Reynolds*, 313 U.S. 428 36
Helvering v. *R. J. Reynolds Tobacco Co.*, 306 U.S. 110 .. 35
Helvering v. *Wilshire Oil Co.*, 308 U.S. 90 ..... 17, 35, 36
Hobbs v. *McLean*, 117 U.S. 567 19
Interstate Drop Forge Co. v. *Commissioner of Internal Revenue*, 326 F. 2d 743 35
Jenkins v. *McKeithen*, 395 U.S. 411 18
Leary v. *United States*, 395 U.S. 6 37
Massachusetts v. *Mellon*, 262 U.S. 447 19
Massachusetts Trustees v. *United States*, 377 U.S. 235 .. 34

Cases—Continued

	Page
National Labor Relations Board v. *Hearst Publications*, 322 U.S. 111	38
National Labor Relations Board v. *Seven-up Bottling Co.*, 344 U.S. 344	35, 36
Norwegian Nitrogen Products Co. v. *United States*, 288 U.S. 294	33
Perkins v. *Lukens Steel Co.*, 310 U.S. 113	18
Price v. *Forrest*, 173 U.S. 410	19
Railroad Co. v. *Ellerman*, 105 U.S. 166	18
Segal v. *Rochelle*, 382 U.S. 375	19
Tennessee Power Co. v. *Tennessee Valley Authority*, 306 U.S. 118	18
Texas Pacific Railroad v. *Bayliss*, 62 Tex. 570	25
Udall v. *Tallman*, 380 U.S. 1	34, 38
United Public Workers v. *Mitchell*, 330 U.S. 75	21
United States v. *Aetna Surety Co.*, 338 U.S. 366	19
United States v. *Calamaro*, 354 U.S. 351	37
United States v. *Freuhauf*, 365 U.S. 146	21
United States v. *Leslie Salt Co.*, 350 U.S. 383	34
United States v. *Shannon*, 342 U.S. 288	19
Wirtz v. *Bottle Blowers Assn.*, 389 U.S. 463	28
Statutes:	
Agriculture Adjustment Act of 1938, 7 U.S.C. 1365	19
Agriculture Agreement Act of 1938, 7 U.S.C. 608c(15)	19
Anti-Assignment Act, 9 Stat. 41, 31 U.S.C. 203 (1846)	4, 13, 18, 22, 23
Civil Rights Act of 1964	12
Food and Agriculture Act of 1965, 79 Stat. 1187–1213	2, 3, 4, 5
Food, Drug and Cosmetic Act, Sec. 701(f), 21 U.S.C. 371(f)	19
Securities Act of 1933, Sec. 9(a), 15 U.S.C. 77i(a)	19
Soil Conservation and Domestic Allotment Act, amendments to:	
Sec. 8(e), 52 Stat. 34, as amended, 16 U.S.C. 590h(e)	26
Sec. 8(g), 52 Stat. 35 and 205	6, 43

Statutes—Continued

Soil Conservation and Domestic Allotment Act, Sec. 8(g), as amended, 80 Stat. 1167, 16 U.S.C. 590h(g) (Supp. IV) ..... Page 4, 6, 7, 8, 9, 10, 13, 14, 15, 17, 18, 20, 22, 23, 24, 26, 27, 30, 32, 37, 38, 44

5 U.S.C. 553(a)(2) (Supp. IV) 39

7 U.S.C. 1444 (Supp. IV) 4

7 U.S.C. 1444(d)(5) (Supp. IV) 4, 5, 29

7 U.S.C. 1444(d)(10) (Supp. IV) 17, 40, 43

7 U.S.C. 1444(d)(13) (Supp. IV) 4, 13, 14, 15, 17, 18, 20, 21, 22, 30, 31, 32, 33, 36, 37, 38, 40, 43

16 U.S.C. 590d(3) 8

Miscellaneous:

Agriculture and Allied Terminology Dictionary (1962) 26

American English, A Dictionary of, Vol. III, p. 1473 (1942) 25

7 C.F.R. 709.3 (32 Fed. Reg. 14921) 9, 11, 45

7 C.F.R. 722.817 (32 Fed. Reg. 6127) 6, 26

7 C.F.R. 794.3 ..... 6, 46

82 Cong. Rec. 844–845 ..... 23, 30

82 Cong. Rec. 1755–1756 ..... 24, 30

82 Cong. Rec. 1766 24

Davis, *Treatise on Administrative Law*, § 5.07 35

20 Fed. Reg. 6511, 6512 ..... 8, 44

31 Fed. Reg. 2815 ..... 5, 9, 45

31 Fed. Reg. 4884 9

31 Fed. Reg. 4887 6

31 Fed. Reg. 4888 ..... 5, 6, 9

34 Fed. Reg. 1225, as amended, 34 Fed. Reg. 5481 4

H. Rep. No. 1767, 75th Cong., 3d Sess 24

H. Rep. No. 631, 89th Cong., 1st Sess 22, 31, 32

H. Rep. No. 1123, 89th Cong., 1st Sess 3, 4, 22, 31, 32

Land Tenure in the United States, Development and Status, United States Department of Agriculture (1969) 32, 38, 40

Merriam Webster's New International Dictionary (2d ed. 1937) 25

Merriam Webster's Third New International Dictionary (1961) 26

S. Rep. No. 1305, 82d Cong., 1st Sess 7

S. Rep. No. 687, 89th Cong., 1st Sess 3, 4, 32

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 249

CLEMON BARLOW, ET AL., PETITIONERS

v.

B. L. COLLINS, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the court of appeals (R. 63) is reported at 398 F. 2d 398. The opinion of the district court (R. 51) is not officially reported.

JURISDICTION

The judgment of the court of appeals was entered on July 16, 1968. By order of Mr. Justice Black, the time for filing a petition for a writ of certiorari was extended to and including December 13, 1968. The petition was filed on December 13, 1968, and was granted on June 16, 1969 (R. 71; 395 U.S. 958). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the statute authorizing farmers to assign their federal farm payments "to finance making a crop," 16 U.S.C. 590h(g), was intended to protect farmers by rendering them unable to make certain assignments, and thus gives farmers standing to challenge an administrative interpretation of that phrase to include assignments to secure payment of the cash rent of their farm land.

2. If petitioners have standing, whether the Secretary of Agriculture's interpretation of the phrase "to finance making a crop" to include assignments to secure the payment of cash rent for the land upon which crops are grown is reasonable and consistent with the statute.

STATUTES AND REGULATIONS INVOLVED

The relevant provisions of the Anti-Assignment Act, 9 Stat. 41 (1846), 31 U.S.C. 203, the Food and Agriculture Act of 1965, 79 Stat. 1194, the Soil Conservation and Domestic Allotment Act, 52 Stat. 35 and 205, and pertinent regulations are set out in the Appendix.

STATEMENT

Petitioners are farmers who rent the land on which they farm and use it to participate in the upland cotton program under the Food and Agriculture Act of 1965. 79 Stat. 1187–1213 (codified in scattered sections of Titles 7 and 16 of the United States Code). They seek a declaratory judgment invalidating so much of a regulation of the Secretary of Agriculture as permits them to assign their expected federal farm pay-

ments to their lessor for the purpose of securing the payment of their cash rent obligation. They allege that as part of the agreement to lease farm land their lessor has required them to make such assignments to him, and will not rent to them unless they do. As a result, they claim, they are required to obtain financing of all their other farm needs from him as well,[1] and thus are deprived of a measure of economic independence from him which they say was a purpose of the 1965 Act to grant. They commenced this action on behalf of themselves, and others similarly situated, in an effort to avoid this alleged compulsion by eliminating the authority which permits them to assign their expected farm benefits under the upland cotton program to secure the payment of cash rent.

1. Congress enacted the upland cotton program as part of the Food and Agriculture Act of 1965, primarily to reduce over-production of cotton. See S. Rep. No. 687, 89th Cong., 1st Sess. (1965) p. 2; H. Rep. No. 1123, 89th Cong., 1st Sess., pp. 33–34 (1965). To that end, the 1965 Act substantially reduced the benefits which cotton farmers could receive for their cotton. While formerly they could obtain "loans" at the rate of approximately $.30 per pound of cotton, pledging their cotton crop as collateral, the 1965 Act reduced this figure to a rate calculated on the basis of the world price for cotton, $.21 in 1966; additional price support payments of approximately $.09 per pound were to be paid only for cotton produced for do-

[1] The Department of Agriculture limits the number of assignments which can be made in any crop year to one.

mestic markets, which was established to be at least 65 percent of total cotton production. 7 U.S.C. 1444 (Supp. IV). This reduction of benefit levels was intended to reduce the incentive to farmers to raise excess cotton. See H. Rep. No. 1123, *supra,* 34; S. Rep. No. 687, *supra,* at pp. 55–57. At the same time, the Act provided for payments to be made to farmers who diverted some of their land from cotton production to conservation uses, and made such diversion mandatory for larger farms seeking participation in the subsidy loan program. 7 U.S.C. 1444 (Supp IV).

Since cotton farmers were no longer assured of the previous high loan rate on their entire crop, financing the expenses necessary to produce a crop—including the cash rent cost of land in the case of farmers like petitioners who rent their land—became more difficult. In recognition of this difficulty, the 1965 Act provided that the Secretary of Agriculture could authorize payment of up to 50 per cent of the estimated payments to a farmer in advance of the growing season, 7 U.S.C. 1444(d)(5)(Supp. IV),[2] and also expressly made Section 8(g) of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590h(g), applicable to the upland cotton program. 7 U.S.C. 1444(d)(13). Section 8(g) establishes an exception to the general prohibition of assignment of federal monies in the Anti-Assignment Act, 31 U.S.C. 203, for farmers who assign federal farm payments

[2] The Secretary has authorized advance payment only with respect to diversion payments. 7 C.F.R. 722.813. Since no diversion payments were made in 1969, 34 Fed. Reg. 1225, no advance payments were authorized for that year except for "small farms" with a total acreage allotment of fifteen acres or less. 34 Fed. Reg. 1225, as amended, 34 Fed. Reg. 5481.

in compliance with stated conditions, in order "to finance making a crop." In a separate provision, the 1965 Act required the Secretary—as had many earlier acts—to "provide adequate safeguards to protect the interests of tenants and sharecroppers, including provision for sharing diversion payments on a fair and equitable basis under this subsection." 7 U.S.C. 1444 (d)(10)(Supp. IV).

Within a few months after the 1965 Act was enacted, the Secretary adopted the regulations here challenged, which defined the expenses of "making a crop" to include, *inter alia,* the cash rent cost of farm land. 31 Fed. Reg. 2815 (Feb. 17, 1966), 4888 (March 24, 1966). At the same time, pursuant to his responsibility to "provide adequate safeguards to protect the interests of tenants and sharecroppers," he adopted regulations requiring that a landlord's or operator's benefits must be denied if

> (1) The landlord * * * has not afforded his tenants and sharecroppers an opportunity to participate in the program;
>
> (2) The landlord * * * has, in anticipation of or because of participating in the program, reduced the number of tenants and sharecroppers on the farm * * *
>
> (3) There exists between the * * * landlord and any tenant or sharecropper, any lease, contract, agreement or understanding unfairly exacted or required by the * * * landlord which was entered into in anticipation of participating in the program, the effect of which is:
>
> (i) To force the tenant or sharecropper to pay over to the landlord * * * any payment earned by him under the program;

364-636—69——2

> (ii) To change the status of any tenant or sharecropper so as to deprive him of any payment or right which he would otherwise have had under the program; * * *
>
> (iv) To increase the rent to be paid by the tenant or decrease the share of the crop or its proceeds to be received by the sharecropper * * *.
>
> [31 Fed. Reg. 4887–4888; 7 C.F.R. 722.817, 794.3 (1968).]

2. Section 8(g) of the Soil Conservation and Domestic Allotment Act, as enacted in 1938 and as it read in 1965, provided:

> A payment which may be made to a farmer under this section, may be assigned, without discount, by him in writing as security for cash or advances *to finance making a crop.* Such assignment shall be signed by the farmer and witnessed by a member of the county committee * * *. Such assignment shall include the statement that the assignment is not made to pay or secure any pre-existing indebtedness. This provision shall not authorize any suit against or impose any liability upon the Secretary * * * if payment to the farmer is made without regard to the existence of any such assignment, * * * [52 Stat. 35 and 205 (1938), 16 U.S.C. 590h(g) (Supp. IV); emphasis added].

Shortly after its enactment, the Secretary of Agriculture established the procedures for applying the statute and defined its operative terms. (See Instructions Relating to Assignments and use of Form ACP–69, issued April 9, 1938, and set out in full as an exhibit to petitioners' brief in the court of appeals, pp. 53–66.) He defined the statutory phrase "to finance

making a crop" to include the expenses of planting, cultivating, or harvesting a crop, of providing food and clothing for the assignor and his dependents, and of conservation practices; he excluded the expense of purchasing farm land [3] or paying its cash or commodity rent.

In the first years of operation of the 1938 Act, payments were made both for undertaking conservation measures and to support the price of the commodities participating farmers grew. Commodity payments ceased, however, during World War II, when the demand for foodstuffs rendered them unnecessary, and Congress therefore stopped appropriating funds for this purpose. Since that time, only conservation payments have been made, and the provision permitting assignment of federal payments has been of slight importance. For example, in 1952—the last year in which statistics were recorded—the Department of Agriculture's Agricultural Stabilization and Conservation Service informs us that only 2,140 of 2,483,000 participating farmers made assignments, including five assignments in Alabama and ten in Mississippi. In the same year, the Secretary of Agriculture unsuccessfully sought the repeal of Section 8(g), arguing that it had ceased to be important once commodity payments were no longer made. S. Rep. No. 1305, 82d Cong., 2d Sess., p. 3.

Nonetheless, the Secretary reiterated his administrative interpretation of Section 8(g), including his construction of "to finance making a crop," in formal

[3] As is essentially required by the statutory provision against assignment to secure a prior debt. See pp. 38–39 *infra*.

regulations which he promulgated in 1955.[4] In pertinent part, the regulation provided [20 Fed. Reg. 6511, 6512]:

> *Payment may be assigned to finance making a crop.* A payment which may be made to a farmer * * * under section 8 of the Soil Conservation and Domestic Allotment Act as amended, may be assigned only as security for cash or advances to finance making a crop for the current crop year. To finance making a crop means (a) to finance the planting, cultivating, or harvesting of a crop, including the purchase of equipment required therefor; (b) to provide food, clothing, and other necessities required by the assignor or persons dependent upon the assignor; or (c) to finance the carrying out of soil or water conservation practices. Nothing contained herein shall be construed to authorize an assignment given to secure the payment of the whole or any part of the purchase price of a farm or the payment of the whole or any part of a cash or fixed commodity rent for a farm.

As related above, Congress enacted the Food and Agriculture Act of 1965 in November of 1965, creating a new class of farm benefits (price support payments and diversion payments) to which farmers participating in the upland cotton program were entitled and providing that those payments could be assigned under Section 8(g). Three months later, in February 1966, the 1955 regulations construing Section 8(g) were

[4] 16 U.S.C. 590d(3) expressly confers upon the Secretary the authority to "prescribe such regulations, as he may deem proper, to carry out the provisions of this chapter."

amended to permit assignments made to secure payment of the cash rent of a farm. 31 Fed. Reg. 2815.[5] In March, a month later, the regulation as thus amended was adopted, together with the protective provisions quoted above at pp. 5–6, to govern the upland cotton program.[6] 31 Fed. Reg. 4884, 4888. Thus, if farmers participating in the upland cotton program, such as petitioners, agreed with their lessors to assign the federal farm payments to which they are eligible under the cotton program to their lessors to secure payment of the cash rent of their farm land, the Secretary would now give effect to this assignment (assuming the other requirements set by statute and regulation had been satisfied[7]).

[5] 31 Fed. Reg. 2815 (Feb. 17, 1966) provides:

> 1. The second sentence of * * * [20 Fed. Reg. 6511, 6512 as set forth above] is amended by inserting immediately before the semicolon at the end of paragraph (a) the following: "and the payment of cash rent for land used therefor."
>
> * * * * *
>
> 2. The last sentence of * * * [20 Fed. Reg. 6511, 6512 as set forth above] is amended by deleting the words "cash or".

[6] Petitioners' complaint is cast solely in terms of the February action amending the interpretation of Section 8(g) to permit rather than exclude assignments to secure the payment of cash rent for farm land. It was the March action, however, which adopted the amended regulation in its entirety, together with various other provisions, to govern the upland cotton program. It thus would appear to be the authority for the March action which is at issue.

[7] The statutory assignment provision, 16 U.S.C. 590h(g), and the regulations thereunder, 7 C.F.R. 709.3 (32 Fed. Reg. 14921, Oct. 28, 1967), also require that an assignment be in writing; be signed by the farmer; be witnessed by specified persons; be without discount; and not be for a pre-existing debt.

Under the upland cotton program, there has been a resurgence of assignments. The Agricultural Stabilization and Conservation Service informs us that in 1968, 73,235 of approximately 667,000 participants in the program assigned $149,091,708.00 of payments, constituting about 19 percent of the total paid to all farmers under the program ($784,000,000). Since this 19 percent was assigned by only 11 percent of the farmers receiving benefits, it is evident that assignments are made extensively by persons at the upper as well as the lower end of the benefit scale. Thus, the figures given produce an average assignment level of approximately $2035 per assignor, as compared to an average benefit level of approximately $1175 per participating farmer. The average assignment [8] was less than $1,000 in Alabama (9,016 assignors), Florida (29), Illinois (7), North Carolina (495), South Carolina (2,886), Tennessee (4,758) and Virginia (2) but more than $2,000 in Arizona (941), California (1,803), New Mexico (903) and Texas (12,938). The statistics do not show, however, what proportion of these assignments were made to secure an obligation to pay cash rent.

Section 8(g) was amended in the fall of 1966, after the Secretary had promulgated the challenged regulations. As amended, the statute permits assignments to finance not only making a crop, but also "handling or marketing an agricultural commodity, or performing a conservation practice." 16 U.S.C. 590h(g) (Supp. IV). A new regulation, in substance the same

[8] The figures reflect the size of the assignments, and not the total income of the farmers receiving them.

as its predecessor, was then issued. It provides (7 C.F.R. 709.3):

> *Purposes for which a payment may be assigned.*
>
> (a) A payment which may be made to a producer under any program to which this part is applicable may be assigned only as security for cash or advances to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice, for the current crop year. No assignment may be made to secure or pay any preexisting indebtedness of any nature whatsoever.
>
> (b) *To finance making a crop means (1) to finance the planting, cultivating, or harvesting of a crop, including the purchase of equipment required therefor, and the payment of cash rent for land used therefor, or (2) to provide food, clothing, and other necessities required by the producer or persons dependent upon him.*
>
> (c) Nothing contained herein shall be construed to authorize an assignment given to secure the payment of the whole or any part of the purchase price of a farm or the payment of the whole or any part of a fixed commodity rent for a farm. [Emphasis added.]

3. The district court (Judge Johnson) held that the government's action in permitting, but not requiring, farmers to assign their federal farm payments to secure the cash rent cost of farm land did not invade a legally protected interest of petitioners and that petitioners therefore lacked standing to sue. Alternatively, the court ruled, petitioners failed on the merits. It found that Congress has expressly authorized assignments "to finance making a crop" and "the conclusion is inescapable" that the regulation permitting

assignments to cover payment of cash rent for the land used to grow a crop is "reasonable and consistent with the statute" (R. 54). Accordingly, it dismissed the action against respondent officials of the Department of Agriculture.[9]

The United States Court of Appeals for the Fifth Circuit, Judge Tuttle dissenting, affirmed the dismissal on the ground that petitioners lacked standing. The court noted that petitioners were complaining of "nothing more than an economic consequence permitted, but not required, by government action" (R. 67). The court held that, in order to have standing to challenge governmental action resulting in alleged economic injury, petitioners must demonstrate a legal right to be protected from that injury (R. 65). The court concluded that petitioners had no such right. Specifically, the court ruled that petitioners could demonstrate no property or contract right to be prohibited from assigning their farm payments (R. 65). Furthermore, the court reviewed the relevant statutory provisions and found no "express or implied statutory grant" of standing (R. 65). The statutory provisions involved, the court held, created no right to be precluded from assigning farm payments, but rather evidenced an intent on the part of Congress to expand the areas of permissible assignments (R. 66). The court did not reach the merits.[10]

---

[9] The complaint also contained separate claims for relief against petitioners' landlord under the 1964 Federal Civil Rights Act and other statutes. These claims were not dismissed, and the issues they raised are not before this Court.

[10] The court did, however, indicate it rejected petitioners' contention that "making a crop" must be given a technical meaning

In dissent, Judge Tuttle found in the statutory provision a Congressional intent to protect farmers by limiting their rights of assignment. He thus concluded that farmers, such as petitioners, would have standing to enforce that limitation. On the merits, the dissenting judge would have construed the term "to finance making a crop" so as to exclude any costs associated with obtaining land for cultivation, such as cash rent (R. 67–69).

SUMMARY OF ARGUMENT

I

Petitioners can establish their standing to bring this action only if they can show that Congress in passing the assignment provisions of Section 8(g) (16 U.S.C. 590h(g)) and 7 U.S.C. 1444(d)(13) had as a purpose protecting tenant farmers from economic pressure to assign federal farm benefits to meet some of their current farming costs, in this case the cost of renting land on which to farm. There is no personal right to be prohibited from making assignments. The general prohibition on assignment of federal monies arises out of the federal Anti-Assignment Act, 31 U.S.C. 203, which is concerned with the protection of government rather than individual interests; and the right to make an assignment imposes no legal obligation on an individual to act. Nor are there any provisions under the Food and Agriculture Act of 1965 which specifically confer standing on petitioners to seek review of the Secretary's actions under it. Thus, standing can exist

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which would preclude assignments to secure payment of cash rent for farm land (R. 66).

only on the basis of *Hardin* v. *Kentucky Utilities Co.*, 390 U.S. 1.

Under *Hardin*, petitioners must show, as the *Hardin* plaintiffs did, that the legislation under which they seek relief was designed to protect them from the type of injury of which they complain. It is not sufficient to show generally that the legislation was intended to benefit them, and to assert that it fails to do so. Such a doctrine would not assure that personal stake in the outcome and concreteness of issues which this Court has consistently identified as being at the root of the standing question. It thus could invite substantial litigative interference with government operations through lawsuits where the plaintiffs might lack the incentive to make any arguments but those which they thought could establish a useful principle.

A review of the relevant legislative history makes it doubtful whether one can appropriately assign *any* protective purpose to Section 8(g) and 7 U.S.C. 1444 (d)(13). It shows that Congress was principally concerned with permitting farmers to use their expectancy of receiving federal farm benefits as a means of obtaining financing for their current expenses, with no indication at all of a distinction among the various types of current expenses—such as the cash rent cost of farm land—for the purpose of permitting assignments only as to some. The policy against assignments is supplied principally by the federal Anti-Assignment Act, which has no purpose to protect private interests. The legislative history of 7 U.S.C. 1444(d)(13) mentions only the facilitative, expansive purpose to permit assignments—as does the history of the 1966

amendment to Section 8(g) which expanded its designation of the purposes for which assignments could be made. While the legislative history of Section 8(g) itself contains some indications of concern over the possibility of economic coercion, these related solely to the question of assuring that farmers got full value for their assignments and that the assignment was used to finance current farming needs. Nothing suggests that any distinction was being drawn between one type of current expense, such as that of cash rent for farm land, and another, such as that of seeds. Assignments to landlords were expected, and even encouraged, by the supporters of the enactment; there is nothing to show that landlords were meant to be discriminated against by the assignment provision.

II

Similar reasoning establishes that the regulation defining the expenses of "making a crop" to include the cash rent cost of farm land is valid. Thus, while petitioners view 7 U.S.C. 1444(d)(13) as having been enacted with the landlord-tenant situation particularly in mind, all indications are that it was not. Just because there are such strongly held views about the relationship of landlords and tenants on southern cotton farms, any legislation meant to influence that relationship would have extensive, explicit legislative history revealing that purpose. But there is not even a hint of such a purpose in the records of Congress' deliberations. Rather, the scanty history there is makes clear that Congress was concerned with the ability of *all* cotton farmers to finance current expenses in view of

the changes that were being made in the cotton program. There is nothing to indicate that Congress thought current expenses for farm land any less important in this regard than other current farming expenses, or that it even considered whether a distinction should be drawn between some types of current farming expenses and others for the purpose of permitting assignments. In fact, the assignment provisions are heavily used by relatively large cotton farmers, as there is every indication Congress expected them to be.

In these circumstances, a regulation which defines the phrase "to finance making a crop" to include among qualified expenses the obviously necessary cost (where applicable) of cash rent for farm land is permissible. Although the Secretary for many years excluded that cost from the definition, that neither proves that he could not have included it originally, nor forecloses him from revising his opinion when, as here, Congress extends what had been a basically moribund provision into an entirely separate farm program. In suggesting otherwise, petitioners misuse the maxim that legislative reenactment of a provision ratifies existing administrative interpretations; on only one occasion of which we are aware has that maxim been used to foreclose prospective administrative change in interpretation, as distinct from use to uphold existing regulations, and in that case there was a wealth of legislative history utterly lacking here. Where more than one interpretation is possible, Congress' failure to disapprove an existing interpretation does not show

that it would balk at another. Indeed, as this Court has recognized, any such proposition, freezing administrative regulation into the form it happened to have at the moment of reenactment, "would deprive the administrative process of some of its most valuable qualities." *Helvering* v. *Wilshire Oil Co.*, 308 U.S. 90, 101. The Secretary was entitled to consider the phrase's meaning anew; the meaning he assigned to it is rational and consistent with statutory purpose. Finally, the Secretary's interpretation is not inconsistent with his statutory duty to "provide adequate safeguards to protect the interests of tenants and sharecroppers." 7 U.S.C. 1444(d)(10) (Supp. IV).

ARGUMENT

I

PETITIONERS LACK STANDING UNDER THE TEST OF *HARDIN* V. *KENTUCKY UTILITIES CO.*, 390 U.S. 1 SINCE CONGRESS IN PASSING THE ASSIGNMENT PROVISION INVOLVED DID NOT HAVE AS A PURPOSE PROTECTING TENANT FARMERS FROM ECONOMIC PRESSURE TO ASSIGN FEDERAL FARM BENEFITS TO SECURE PAYMENT OF CURRENT FARM-RELATED COSTS

Petitioners assert that by permitting, albeit not requiring, them to make assignments of their federal farm benefits to secure their payment of cash rent for farm land, the Secretary's regulation exposes them to economic coercion by their landlords so to assign, which it was a major purpose of Section 8(g) and 7 U.S.C. 1444(d)(13) to avoid. If they are correct in thus assessing the purpose of the legislation, then they have shown a protected interest and thus have the

requisite standing to challenge the regulations which permit them to make such assignments under the principles explained by this Court in *Hardin* v. *Kentucky Utilities Co.*, 390 U.S. 1. But in our view, their claim of standing rests solely on their ability to demonstrate such a specific purpose. For "something more than an 'adversary interest' is necessary to confer standing [to challenge government action]. There must in addition be some connection between the official action challenged and some legally protected interest of the party challenging that action." *Jenkins v. McKeithen*, 395 U.S. 411, 423. See also *Railroad Co.* v. *Ellerman*, 105 U.S. 166, 173–74; *Alabama Power Co* v. *Ickes*, 302 U.S. 464, 479; *Tennessee Power Co.* v. *Tennessee Valley Authority*, 306 U.S. 118, 137–138; *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 125.

A. UNLESS PETITIONERS SATISFY THE *HARDIN* STANDARD, THEY LACK STANDING

As petitioners themselves at least implicitly recognize, the only arguable basis for standing in this case is their assertion that 7 U.S.C. 1444(d)(13) and, through it, Section 8(g) were meant to protect them against the consequences of being able to assign federal farm benefits for some types of farm costs, including the cost of cash rent for farm land. For there is no general right to have governmental restrictions placed on a person's freedom to assign monies which he may receive from the government or others. The statute which prohibits such assignments generally, the federal Anti-Assignment Act, 31 U.S.C. 203, was adopted to protect the interests of the government in the efficient handling of its obligations, not private

citizens. *Price* v. *Forrest,* 173 U.S. 410, 423; *Segal* v. *Rochelle,* 382 U.S. 375; 384; *United States* v. *Shannon,* 342 U.S. 288, 293; *Hobbs* v. *McLean,* 117 U.S. 567, 576; *United States* v. *Aetna Surety Co.,* 338 U.S. 366, 373. As to an individual, the failure to impose such a restriction would free rather than hinder his acts; it would require him neither to make nor to refrain from making assignments. Thus, an act lifting the general ban on assignments on its face "imposes no obligation [upon the person made eligible to assign] but simply extends an option which * * * [he] is free to accept or reject." *Massachusetts* v. *Mellon,* 262 U.S. 447, 480. Petitioners cannot complain of any invasion of legally protected rights or interests unless they can show that Congress' partial lifting of the ban as to them had a protective as well as the apparent facilitating function.

Nor does the Food and Agriculture Act of 1965 expressly recognize a right of tenant farmers to challenge judicially the Secretary's regulations adopted under the Act in court. Unlike many other agricultural acts establishing specific agrarian programs, see, *e.g.,* 7 U.S.C. 1365–1366 (Agricultural Adjustment Act of 1938); 7 U.S.C. 608c(15)(B) (Agricultural Agreement Act of 1938), the 1965 Act contains no provision for judicial review of actions of the Secretary of Agriculture. The 1965 Act does not contain any general provision for review of the Secretary's actions by persons "aggrieved" [11] or "adversely affected", [12] which

[11] *E.g.,* Section 9(a) of the Securities Act of 1933, 15 U.S.C. 77i(a).

[12] *E.g.,* Section 701(f)(1) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 371(f)(1).

confers standing upon such persons to assert a public interest as a "private Attorney General." See *Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U.S. 470; *Associated Industries* v. *Ickes*, 134 F. 2d 694 (C.A. 2), certiorari vacated as moot, 320 U.S. 707.

B. *HARDIN* REQUIRES THAT PETITIONERS SHOW NOT SIMPLY THAT SECTION 8(g) WAS INTENDED TO BENEFIT THEIR CLASS IN A GENERAL WAY, BUT THAT THE SECRETARY'S ACTION THREATENS A SPECIFIC INTEREST OF THEIRS WHICH THE STATUTE WAS DESIGNED TO PROTECT

Hardin involved a suit by a private electric utility company to enjoin the Tennessee Valley Authority (TVA) from supplying power to a certain geographic area in competition with the plaintiff. The private utility alleged that the expansion of TVA service to the area violated an express statutory provision, section 15d of the TVA Act of 1933, as amended, limiting the geographical area within which TVA could supply electricity. The parties conceded, and this Court found after reviewing explicit legislative history on the point, that "one of the primary purposes of the area limitations in § 15d of the Act was to protect private utilities from TVA competition." *Id.*, 390 U.S. at 6. This Court concluded that since plaintiff private utility was in the class Section 15d was designed to protect *from the specified injury of competition* and the utility was complaining of that injury, it had standing judicially to bring suit.

Although petitioners at various points in their brief appear to assert that it would be sufficient to confer standing on them to show that they were the intended beneficiaries of Section 8(g) and 7 U.S.C. 1444(d)

(13), *e.g.*, Pet. Br. pp. 17–18, we submit that *Hardin* requires something more. If it were sufficient to confer standing on an individual simply to show that in a general way he was the intended beneficiary of legislation and that the action proposed did not benefit him—if a farmer could challenge any administrative action under any farm legislation on the theory that the legislation was intended to, but the Secretary's act did not, benefit him—the doctrine would no longer assure the "personal stake in the outcome of the controversy [and] * * * concrete adverseness which sharpens the presentation of issues," *Baker* v. *Carr*, 369 U.S. 186, 204. A standard so malleable would invite "ill-defined controversies over constitutional issues," *United Public Workers* v. *Mitchell*, 330 U.S. 75, 90, and the bringing of cases which, because they were meant more to establish a point than to vindicate a concrete and pressing personal interest, would have a "hypothetical or abstract character." *Aetna Life Ins. Co.* v. *Haworth*, 300 U.S. 227, 240. There must be "a logical nexus between the status asserted and the claim sought to be adjudicated," *Flast* v. *Cohen*, 392 U.S. 83, 102, and that nexus must be sufficient to give confidence that every aspect of the situation will be explored. *United States* v. *Freuhauf*, 365 U.S. 146, 157. The "beneficiary" standard petitioners propose ignores these important considerations, and could lead to substantial litigative interference with government operations.

In order to infer standing from a statute that does not expressly confer it, petitioners must show that it was enacted to protect them from the specific type of injury of which they complain.

C. IF THE LEGISLATIVE HISTORY OF SECTION 8(G) AND 7 U.S.C. 1444(d)(13) SHOWS ANY PURPOSE TO PROTECT SMALL FARMERS FROM ECONOMIC PRESSURE TO ASSIGN FEDERAL FARM BENEFITS, THAT PROTECTION WAS NOT MEANT TO EXTEND TO ASSIGNMENTS RELATED TO THEIR CURRENT COSTS OF FARMING

It is doubtful whether one can appropriately assign *any* protective purpose to the action of Congress in enacting Section 8(g) and 7 U.S.C. 1444(d)(13). As already noted, *supra* pp. 18–19, the prohibition on farmers' (and others') assignments of federal monies arises not from farm legislation but from the federal Anti-Assignment Act, 31 U.S.C. 203, which imposes a general prohibition on assignments. Since the purpose of the Anti-Assignment Act is to protect government, not private, interests, no private citizens would appear to have standing to enforce its bar under *Hardin,* even if the government's interests in a particular case happened to coincide with his own.

Section 8(g) and 7 U.S.C. 1444(d)(13) create exceptions to this general prohibition, for the apparent purpose of facilitating farmers' financing of their farm activities. Indeed, the legislative history of the latter speaks only of this facilitative, expansive purpose: the congressional reports note that the legislation would permit cotton farmers to assign their "price support and diversion payments to private lending agencies in obtaining production loans." H. Rep. No. 1123 (Conf. Rep.); 89th Cong., 1st Sess., p. 33; see H. Rep. 631, 89th Cong., 1st Sess., p. 3 (1965). Congress reiterated this expansive view a year later, when in 1966 it amended Section 8(g) to provide

a broader statement of farmers' assignment rights.[13] There are no contemporary voices of caution warning of the effect a broader assignment right might have on the economic position of tenant farmers or other small farmers vis-à-vis their landlords or other suppliers. To the extent the language of the statute thus appears to represent a congressional balance between farmers' perceived needs to assign and the government's interest in restricting assignments, petitioners have no standing to complain that they were favored in the assessment.

As we noted in our opposition to the petition for certiorari, pp. 11–12 and note 7, the legislative history of Section 8(g) could be read to show concern for the economic pressures small farmers might experience to make unfavorable assignments. In the House, this apparent concern took the form of limiting the persons to whom assignments could be made to landlords—the very persons whose alleged economic power to compel assignments is sought to be avoided in the present action. 82 Cong. Rec. 844–845 (1937). In the Senate, a sweeping exemption for farmers from the Anti-Assignment Act was twice proposed by Senator Bilbo of Mississippi, and twice defeated after objec-

[13] *Supra*, p. 10. We do not rely on the 1966 amendment, as petitioners suppose, as a specific ratification of the Secretary's understanding of "to finance making a crop" to include the expense of cash rent. What is significant, in our view, is that in successive years, straddling the challenged regulation, Congress adopted statutory provisions facilitating assignment by farmers in response only to statements of the need for making assignments easier. In the absence of legislative reference to any need for caution in permitting assignments in order to protect farmers' economic interests, it seems unreal to suppose that such a need was known to the Congress, concerned it, or shaped its acts.

tions were voiced that unsophisticated farmers might be forced or induced by economic circumstances to assign away their rights to speculators for a fraction of their worth. 82 Cong. Rec. 1755–1756, 1766 (1937). The conference then reported, without substantial explanation, Section 8(g) as it read until the 1966 amendments. That is, any farmer—not just a tenant—could make an assignment to any person—not just his landlord—so long as it was (1) in writing; (2) not made to secure a pre-existing debt; (3) made without discount; and (4) "to finance making a crop." H. Rep. No. 1767, 75th Cong., 3d Sess. 60 (1938).

Thus, it appears possible that the 75th Congress tempered its willingness to expand farmers' rights to assign federal benefits with an understanding of the circumstances in which such assignments could prove a poor bargain. But as petitioners recognize, Pet. Br. 30–31, the limitations imposed were designed to see that the farmer got a fair bargain, not to prevent him from making one. Thus, assignments were to be made in writing; they were to be made for full value; and they were to be made for present value, not to meet past debts. Each of these limitations responded to the considerations which had been voiced in the debate, chiefly that farmers would be forced by economic circumstances to assign payments at severe discount, or otherwise be denied assistance in meeting their current financial needs.

There remains the phrase "to finance making a crop." In the government's view, the legislative history does not justify treating this as anything more than a reference to farming costs in general. Such a

reference is readily explained as an effort to advance *government* interests by assuring that the federal funds would aid the faltering farm economy—not necessarily an attempt to protect farmers as such. Moreover, the petitioners' attempt to invest it with a tight technical meaning founders on several shoals—the antiquity and remoteness of the cases they rely upon to show that meaning;[14] the utter absence of the kind of indication one ordinarily finds, where Congress has knowingly used a possibly technical term, that it understands and means the technical meaning to apply;[15] and the immediate administrative inter-

[14] *Texas & Pacific Ry. Co.* v. *Bayliss*, 62 Tex. 570, 574, held in 1884 that when a farmer claiming damage from a railroad pleaded the crop he would have "made," he was referring to the crop he would have harvested and not the value of the crop as it stood in the field at the moment of damage. The dissent in *Driver* v. *Maxwell*, 56 Ga. 11, 20, was of the opinion in 1876 that a rental contract which called for a share of the crops "made" on the land required the share to be calculated at the moment of harvest rather than later—such as at marketing time—when substantial losses may have occurred. Neither case is in any way concerned with the question whether the cash rent cost of farm land is an expense of "making a crop," and both are as consistent with an affirmative as with a negative answer to that question.

[15] Two comprehensive American dictionaries contemporary to Section 8(g) fail to reflect any tight, technical meaning. The 1937 volume of Merriam-Webster's New International Dictionary, Second Edition, gives no definition of "making a crop" in its list of technical usages of the verb "make." At 1485. It does use the phrase "to *make* a full crop of grain" as an example of a subsidiary meaning, to gain, acquire, or attain, *ibid.*, sense 34, but it is entirely consistent to view the cost of cash rent as one of the expenses of making a crop in that sense. Similarly, A Dictionary of American English, Vol. III, p. 1473 (1942), gives as a usage of the verb "make" to "bring (a growing crop) to maturity; to produce (a crop)," quoting several examples from American writers; neither the usage nor the examples sug-

pretation of the phrase to include a much wider class of expenses than the proposed technical meaning could possibly support.[16] Finally, the legislative origins of Section 8(g), with southern legislators willing to trust the landlord above all others, and the existence then of a pattern of landlord financing of tenants' and sharecroppers' expenses which has persisted almost unchanged until today, both belie the notion that Section 8(g) was meant radically to revise tenant-landlord relationships through federal purchase of the tenants' economic independence.

There was, indeed, an emphasis on fairness between tenants and landlords in dividing the federal benefits paid for any one farm, *e.g.*, Section 8(e), 16 U.S.C. 590h(e); a landlord who increased the rent to soak up the monies made available by federal benefits would have been and still would be in plain violation of federal law. 7 C.F.R. 722.817. But there is nothing to show that Congress meant to alter the existing landholding arrangements, either through the words "to finance making a crop" or through any other language in the act. Only such intent—which one would expect to find

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gest any basis for concluding that a reference to the expenses of making a crop would comprehend some, but not all, of the costs the farmer making it would have to pay. Nor is such a basis any more apparent in the more recent Dictionary of Agriculture and Allied Terminology (1962), on which petitioners rely (Br., p. 11). See also Merriam-Webster's Third New International Dictionary, p. 1363 (1961), which defines making a crop as a dialect variant of the South and Midlands, meaning "to plant and raise (a crop)." Cash rent for farm land is a cost of this activity.

[16] *E.g.*, food and clothing for the farmer and his family and the cost of conservation practices.

explicitly stated in the history of the act if it existed—could supply the strained meaning for which petitioners contend.

Nor can it be objected that this discussion trenches too closely on the merits. For as we understand *Hardin*, the question whether petitioners are members of a class complaining of an injury against which they were to be protected is a rather specific one. Here, where the immediately relevant legislation, the Act of 1965, shows no evidence of any protective motivation, and the principal motivation even of Section 8(g), viewed against the background of the Anti-Assignment Act, must be seen to have been expansive rather than protective, the conclusive and direct legislative history which characterized *Hardin* is entirely lacking. Even if one nonetheless concludes that Section 8(g) was meant in substantial part to protect farmers' interests in not being subjected to economic coercion, we think it incumbent on petitioners to show that Congress recognized that such coercion could be applied as to some but not all types of current farming costs and meant by its reference to "making a crop" to distinguish those types from the others.[17] Petitioners have not made that showing.

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[17] The fact that the Secretary distinguished between various types of farming costs, permitting assignments for some but not for land costs, demonstrates no such recognition. Assignments to pay the purchase price of land were in effect precluded by the prohibition against assigning to pay pre-existing debts. Assignments against commodity rents or share rents are difficult to administer, since the value of the rent cannot be fully known before the harvest, and the rent itself is generally paid in kind. The Secretary may have precluded assignments for cash rent

II

THE REGULATION DEFINING THE EXPENSES OF "MAKING A CROP" TO INCLUDE THE CASH RENT COST OF THE LAND ON WHICH A CROP IS GROWN IS A VALID INTERPRETATION OF THE STATUTORY PHRASE

Should this Court disagree with the court of appeals' conclusion that petitioners lack standing, it would be appropriate to remand the matter to that court so that it may first pass upon the merits of the controversy. See, *e.g., Wirtz* v. *Bottle Blowers Ass'n*, 389 U.S. 463. However, since this Court's grant of the petition for certiorari was unlimited and petitioners discuss the merits at length, we set forth below our reasons for believing that the challenged regulation is a valid interpretation of the statutory provisions involved.

A. INCLUSION OF CASH RENT COSTS IS CONSISTENT WITH THE STATUTORY LANGUAGE AND PURPOSE

The basic issue on the merits is what the statutory phrase "to finance making a crop" means or, within the limits that always inhere in any discussion of legislative purpose, what Congress intended the language to accomplish. Petitioners view the phrase as meaning all costs associated with growing a crop except those of the land on which it is grown, and claim that if it is thus interpreted tenant farmers on southern farms will be able to use the assignable

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at that time merely to avoid the appearance of creating pressure on landlords to switch to a cash rent system (under which the tenant has substantially greater independence than other rent systems), or because there was no great need for such financing at that time. Compare text at pp. 38–39 *infra*.

funds to secure greater economic independence of their landlords than they have had previously. Whether or not such a change is desirable—if, indeed, adoption of petitioners' view could bring it about—there is utterly no evidence that Congress understood or meant the language it used to accomplish it. As petitioners themselves recognize, the "theory of the federal agricultural programs * * * has not been directly to reform one-sided economic relationships in the rural South but rather to prohibit landowners' manipulation of those traditional relationships so as to deprive small producers of their fair share of federal benefits." Pet. Br., p. 30. Any change in that theory would be reflected in legislative history of a sort petitioners are unable to cite.

Rather, as we now show, the legislative history reveals no more precise a purpose than the desire to assist farmers in financing the expenses of farming, in this case by making it possible for them to assign the farm benefits they expect to receive [18] against their current costs. Nothing in that purpose suggests any distinction between the current cost of land and the current cost of other necessaries of farming, and the plain meaning of the words used readily includes both. Certainly, if the phrase "to finance making a crop" includes farming costs as indirect as those of food and clothing for a farmer's dependents, as peti-

[18] As shown above at p. 4 n. 2, the Secretary has authorized part payment of anticipated federal benefits in advance of the growing season only as to the payments made for diverting land from cotton production to conservation uses, and not with respect to price support payments or loans. No diversion payments were made in 1969.

tioners agree (Pet. Br. 30 n.), it also includes the cost of obtaining the land on which he farms.

There is neither a statutory definition of "to finance making a crop" nor any statutory distinction among assignments which "finance making a crop" for the purpose of permitting some and prohibiting others. There is no discussion in the limited history of Section 8(g) to suggest a limited meaning for the phrase and, as shown above at notes 14 and 15, even accepting the phrase as synonymous with acquiring, producing, or planting and raising a crop, there is nothing to indicate that in permitting assignments to finance that activity Congress meant to connote any technical or special meaning narrower than necessary farming costs in general. The cost of renting land is such a cost, and there is no indication that Congress rejected the notion that that expense should be so considered. To the contrary, the legislative history of Section 8(g) is clear that both houses of Congress acquiesced in the notion that assignments could be made to landlords. See 82 Cong. Rec., *supra,* at pp. 844, 1755–1756.

Putting aside for the moment the question whether Congress tacitly adopted the Secretary's existing definition of "making a crop" when it enacted 7 U.S.C. 1444(d)(13), nothing express in the sparse legislative history of that provision suggests any congressional recognition of or desire to distinguish among various types of current farming costs in permitting assignment of farm benefits. Indeed, only two brief sentences about the provision appear in the whole of the 1965 Act's legislative history. One states only that it incorporates by reference the provisions of Section 8(g)

permitting assignments. H. Rep. No. 631, 89th Cong., 1st Sess. p. 40 (1965). The other states that the Act would permit cotton farmers to assign their "price support and diversion payments to private lending agencies in obtaining production loans." *Id.* at p. 3; H. Rep. No. 1123, 89th Cong., 1st Sess. p. 33 (1965). Loans to finance farm production, again, are entirely consistent with all kinds of current farming costs—current land costs as well as current costs of seed, tools, clothing, food, or conservation measures. Given the purpose petitioners discern in a distinction between land and other costs—to enable them to obtain economic independence of their landlords—one may be sure that had a distinction been meant, it would have been noted and explained.

Moreover, widespread use of assignments under the upland cotton program, among farmers receiving a high level of benefits as well as farmers who receive only a little,[19] makes clear that 7 U.S.C. 1444(d)(13) is not aimed at the landlord-tenant situation or intended principally for tenants' benefit, as petitioners tacitly assume.[20] Rather, it was intended to benefit *all*

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[19] As noted in the Statement, *supra*, p. 10, the average assignment under the program substantially exceeds the average benefit paid. In Arizona, the average assignment (for 941 farmers) is almost $20,000; in California (1,803 farmers) it exceeds $9,500.

[20] The legislative history's reference to "private lending agencies" is a further indication that Congress in enacting 7 U.S.C. 1444(d)(13) was concerned with the financing needs of all farmers, not specifically the landlord-tenant situation. Under Section 8(g), landlords had been major recipients of assignments, albeit in that case not for rent. However, the phrase is

farmers under the program by facilitating their financing of current farm expenses at a time when, as Congress clearly recognized,[21] their federal benefits in other respects were being curtailed. Petitioners suggest no reason why farmers generally would wish to be disabled from making assignments to secure the payment of rent for farm land, as distinct from their other current farming costs.[22]

In the absence of any Congressional definition or limitation of the statutory phrase "to finance making a crop," the Secretary of Agriculture, as administrator of the program affected by the assignment provision and as the person having the necessary experi-

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not necessarily all-inclusive, and in any event a landlord extending credit, whether for seed, food, clothing, or rent, could be considered such an agency.

[21] H. Rep. No. 631, *supra*, at 5–6, 28–30; S. Rep. No. 687, 89th Cong., 1st Sess., 2, 6–7, 55–57 (1965); H. Rep. No. 1123, *supra*, at 32–34.

[22] Although in 1935 there were about four times as many tenant farmers (2.9 million) as farmers who owned some land and rented additional land on which to farm (0.7 million), in 1964 part owners outnumbered tenant farmers (800,000 to 500,000) and rented almost twice as much land (approximately 250 million acres to 150 million). United States Department of Agriculture, *Land Tenure in the United States, Development and Status*, p. 35 tables A–5, A–6 (1969) (hereinafter *Land Tenure*). "Although these part owners accounted for one-fourth of all farms in 1964, they operated almost half the land in farms." *Id.* at 14. By contrast, tenant farmers operated 13.1 percent of the nation's farmland, *id.* at 35, table A–6. Although the cited study does not provide statistics on tenure patterns relating to particular crops, such as cotton, it does tend to refute the notions that primarily tenant farmers were affected by the extension of Section 8(g) and 7 U.S.C. 1444(d)(13) assignments to the financing of cash rent, and that the enactment of the latter provision was principally concerned with their needs.

ence and expertise in agricultural matters, is responsible for defining the phrase to carry out the statute's purpose. As long as the phrase remains undefined by statute, he is free to revise his opinion as changing circumstances or uses of the provision seem to require. That is, the fact that he excluded "cash rent" from the permissible class of assignments in 1938 neither proves that he could not have included it then, nor of itself forecloses him from including it at a later date. Unless he was obliged to give the broadest possible meaning to the statutory phrase or an examination of the legislative history convinces that in fact he did so, his initial interpretation, of itself, poses no barrier to subsequent revision. He was under no such obligation and, as we have shown, the legislative history is not conclusive.

We thus come to the question whether congressional enactment of 7 U.S.C. 1444(d)(13) while the initial interpretation was in effect served to elevate that interpretation into a statutory rule, no longer subject to regulatory change. In our view, petitioners' contention that the enactment of 7 U.S.C. 1444(d)(13) did freeze the 1938 regulation into the statute is a questionable use of the ratification-by-subsequent-legislation theory, and one particularly inappropriate for this case.

In general, the theory that legislative reenactment of a provision ratifies existing administrative interpretations, and the similar maxim favoring administrative constructions of a statute made contemporaneously with its enactment, are used to validate controversial administrative acts rather than to invalidate subsequent changes. *E.g., Norwegian Nitrogen Products Co.* v.

United States, 288 U.S. 294; *Udall* v. *Tallman*, 380 U.S. 1; *Massachusetts Trustees* v. *United States*, 377 U.S. 235. Used as validating devices, they can be valuable tools of interpretation. *Massachusetts Trustees, supra*, at 241–242. Where questions exist as to the validity of a regulation at the time of a statute's reenactment, it may be supposed that those questions come to Congress' attention and it is appropriate to conclude that by reenactment they are resolved in favor of validity. Similarly, since the first administrators of a statute can be expected to have a sound understanding of congressional purpose, an interpretation which they adopt and which goes unchallenged for many years may be thought to acquire a presumption of reasonableness.

The same logic does not suggest, however, that subsequent change in the regulations is invalid.[23] If

[23] In only one recent case of which we are aware has this Court held prospective administrative "rule-making" to be foreclosed by the interaction of past legislative and administrative actions. *United States* v. *Leslie Salt Co.*, 350 U.S. 383. In that case the question was whether certain instruments, promissory notes on their face and as such nontaxable, could be characterized as taxable debentures and certificates of indebtedness. There had previously been a tax on promissory notes, which had been repealed in 1924; the Treasury had adopted an *ad hoc* policy of taxing such instruments after a 1947 success in a court of appeals case. The question was one of major tax significance. The Court held the instruments nontaxable, denying effect to the *ad hoc* policy, even prospectively, as inconsistent with prior congressional and administrative action. In these circumstances, however, there had been a specific congressional judgment that promissory notes should not be taxed, a judgment which was never revised, and the reference to administrative practice—although stated to be crucial—appears in fact to have been a make-weight. The Treasury could have no

more than one valid interpretation is possible, Congress' failure to disapprove an existing interpretation does not establish that a subsequent interpretation is invalid. Moreover, if there is no question about the validity of an existing regulation, there is little reason to suppose that Congress in reenacting the statute has considered the question whether that is the only possible valid regulation under the scheme. Its failure to disapprove one regulatory interpretation does not show that it would balk at another. See *National Labor Relations Board* v. *Seven-up Bottling Co.*, 344 U.S. 344, 350–352; *Interstate Drop Forge Co.* v. *Commissioner of Internal Revenue*, 326 F. 2d 743, 746 (C.A. 7); Davis, *Treatise on Administrative Law* (1958), § 5.07.

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authority to resurrect a tax which, as it previously had recognized, Congress had expressly considered and laid to rest.

The other cases in which this Court refused to give effect to changed administrative policy on the basis of prior policy ratified by congressional action, all also tax cases, presented the issue whether *retroactive* effect could be given the change. Thus, in *Fribourg Navigation Co.* v. *Commissioner of Internal Revenue*, 383 U.S. 272, the issue was whether a 1962 Revenue Ruling could be applied to a 1957 transaction; *Helvering* v. *Griffiths*, 318 U.S. 371, also explicitly concerned itself with retroactivity problems. And compare *Helvering* v. *R. J. Reynolds Tobacco Co.*, 306 U.S. 110, with *Helvering* v. *Wilshire Oil Co.*, 308 U.S. 90. In such circumstances there are apparent equities for permitting the taxpayer the benefit of prior law.

Moreover, all of these cases were tax cases, involving important, recurring problems of construction under a law which Congress frequently and carefully examines. The hypothesis of congressional adoption is far more appealing where such examination has taken place than in a case like the present one, in which there is absolutely no evidence of congressional concern with the problem to which petitioners address themselves.

Even where a vital, specific program has been continued in operation through congressional reenactment of a statute, this Court has refused to infer that prior administrative interpretations of the statutes involved were thus frozen immutably into the scheme:

> * * * The oft-repeated statement that administrative construction receives legislative approval by reenactment of a statutory provision, without material change * * * does not mean that a regulation interpreting a provision of one act becomes frozen into another act merely by reenactment of that provision, so that administrative interpretation cannot be changed prospectively through exercise of appropriate rule-making powers * * *. Such dilution of administrative power would deprive the admintrative process of some of its most valuable qualities—ease of adjustment to change, flexibility in light of experience, swiftness in meeting new or emergency situations. * * *

Helvering v. *Wilshire Oil Co.*, 308 U.S. 90, 100–101; see *Helvering* v. *Reynolds*, 313 U.S. 428, 432. See also *National Labor Relations Board* v. *Seven-Up Bottling Co., supra.*

Here, such an inference would be particularly inappropriate. As noted in the statement, *supra*, p. 7, Section 8(g) ceased to be a significant source of farm financing during World War II, when commodity payments ceased to be made under the 1938 Act of which it was a part. By 1952, less than 0.1 percent of farmers eligible to assign payments in conservation programs were doing so,[24] and the Secretary of Agri-

[24] By way of comparison, over ten percent of eligible farmers made assignments under the upland cotton program in 1968.

culture had called for Section 8(g)'s repeal. If Congress was aware of the history of the section and its interpretation at all, it was aware of this long period of disuse. "However, the scanty legislative history accompanying [the] reenactment gives no hint that Congress knew of these particular regulations, much less of the indirect impact which [petitioners] now ascribe to them." *Leary* v. *United States,* 395 U.S. 6, 24; *Commissioner of Internal Revenue* v. *Glenshaw Glass Co.,* 348 U.S. 426, 431; *United States* v. *Calamaro,* 354 U.S. 351, 359.

Thus, 7 U.S.C. 1444(d)(13) must be viewed as new legislation, albeit in a borrowed form, and the Secretary should be free to interpret it in any way that furthers the purpose of the Act with which it is associated in a manner consistent with the statutory words. Even though the regulation petitioners challenge was first adopted in the form of an amendment to the regulations under Section 8(g) and a month later carried over to govern 7 U.S.C. 1444 (d)(13), both the moribund state of Section 8(g) and the timing of the change (shortly after the 1965 Act was enacted) establish that the interpretation was adopted with the needs and circumstances of the upland cotton program foremost in the Secretary's mind.

The Secretary acted reasonably in interpreting "to finance making a crop" as encompassing assignments to secure the payment of cash rent for farm land. Such payments are well within the plain meaning of the words Congress used. He has traditionally given a broad meaning to the phrase, including the cost of food and clothing for the farmer's family and con-

servation practices together with the costs of seed, fertilizer, and farm equipment. Indeed, if it is appropriate to apply a theory of congressional ratification in this case, the more probable conclusion is that Congress in enacting 7 U.S.C. 1444(d)(13) in 1965 and then amending Section 8(g) in 1966, after the challenged regulation was promulgated, endorsed the Secretary's expansive, facilitative approach to the meaning of the assignment provisions.[25] Assignments to secure rent are consistent both with this approach and with the predominant purpose of the provision—to provide additional financial assistance to farmers to aid them in obtaining the necessaries of farm production, including in some cases land on which to farm. The Secretary could readily have determined that the revision of the cotton program in the direction of lower support prices brought about by the 1965 Act justified making this additional financing tool available to secure payment of farmers' cash rent costs as well as their other necessary farming costs.[26] Compare, *e.g.*, *Udall* v. *Tallman*, 380 U.S. 1, 16–17; *National Labor Relations Board* v. *Hearst Publications*, 322 U.S. 111, 131.

[25] As noted above, p. 10, the amendment expanded the statutory designation of circumstances in which assignments could be made.

[26] In 1964, in the nation as a whole, 42 percent of the nation's farmers, farming over 61 percent of its land, were under an obligation to pay rent, either as tenants or as part owners. *Land Tenure*, p. 14 table 4. In 1964, farmers in the South renting land as part owners or on a cash basis had farms which, in general, exceeded the average value of a farm in that region, *id.* at 37 table A–10. Although it is clear that this generalization does not apply to nonwhites in the South, *id.* at 18 table 5, it again calls into question petitioners' assertion that the change in interpretation was directed at them. Compare n. 22 *supra*.

B. THE REGULATION PERMITTING ASSIGNMENTS TO SECURE PAYMENT OF CASH RENT IS NEITHER INTERNALLY INCONSISTENT NOR PROHIBITED BY THE SECRETARY'S STATUTORY OBLIGATIONS TO "PROVIDE ADEQUATE SAFEGUARDS TO PROTECT THE INTERESTS OF TENANTS AND SHARECROPPERS"

1. Petitioners contend that the regulation is fatally inconsistent because it permits assignments to secure the payment of cash rent, while prohibiting such assignments to secure payment of commodity rent or the purchase price of land. Since Section 8(g) simply permits assignments, without requiring them, the complaint would be more appropriate if made by farmers who wished to make assignments for the latter two purposes; any irrationality in exclusion would not seem to affect persons covered by the provision.

In any event, the exclusions are not fatal to the regulation. The statute specifically prohibits assignments to secure pre-existing indebtedness, so that an assignment towards purchase price could be made only in the year of sale. To avoid any problems of misunderstanding, or on the basis of a judgment that such non-recurring costs were not within the ambit of congressional purpose, the Secretary could properly decline to recognize such assignments even in the year of sale. While it would be possible on our analysis to interpret the statute to permit assignments to secure the payment of commodity rent, there are practical considerations justifying the Secretary's decision not to do so. Commodity rent is usually expressed in terms of a fixed quantity of crops, payable at harvest; its ultimate value is therefore uncertain,

even though there may be a federal support floor under the price. Disputes can arise as to the quality or quantity of the crops delivered (*e.g., Driver* v. *Maxwell, supra*) and there may be special arrangements for sharing the risk of a bad crop year. Since the assignment of federal benefits only secures the primary rent obligation, the Secretary may have been reluctant to enmesh federal administrators in this potentially complex arrangement. And our understanding is that commodity rent arrangements are no longer common; there may have been no apparent reason to change.[27]

2. The regulation is not inconsistent with the Secretary's obligation to "provide adequate safeguards to protect the interests of tenants and sharecroppers" under the Act, 7 U.S.C. 1444(d)(10). As has been shown, nothing in the history of 7 U.S.C. 1444(d)(13), the assignment provision of the 1965 Act, suggests that its enactment was thought to be of particular relevance to tenants and sharecroppers, or that it was meant for their protection. Indeed, the substantial volume of assignments by relatively large beneficiaries under the Act indicates the contrary, that the assignment provision was meant for the benefit of all cotton farmers under the Act. Although petitioners have not relied on the Secretary's obligation adequately to

[27] *Land Tenure*, p. 15. The fact that there were neither rule-making proceedings nor findings when the regulations were promulgated does not undermine their validity, as petitioners imply. Such proceedings are not required for matters "relating to * * * public property, loans, grants, benefits, or contracts." 5 U.S.C. 553(a)(2) (Supp. IV).

safeguard the interests of tenants and sharecroppers as a basis for attacking the regulation, and indeed seem to reject its application in this Court, Pet. Br. 39–40, it is in our view the only provision of the Act specifically directed to their interests.

Viewed as a whole, the regulations protect tenants, even those who make assignments to secure the expense of cash rent, from unfair diversion of federal benefits from them to their landlords. Under those regulations, set out above at pp. 5–6, a landlord's benefits must be denied if he unfairly exacted a contract of a tenant, the effect of which is to force the tenant to pay the landlord what the tenant earns under the program or to raise the rent, in anticipation of federal benefits being paid. The Department of Agriculture has informed us that although, in its view, a landlord may insist that his tenant provide adequate security for the year's rent, it would violate the regulations for the landlord to insist that that security could be provided only through an assignment to him. Thus, if the tenant were able to secure an alternate means of financing, as by an assignment to a bank or cooperative, the landlord could not insist that the tenant finance his crop through him. Before assignments of federal benefits were possible, a tenant could give neither his landlord nor any other of his creditors a security interest in those benefits as a means of financing the necessary expenses of farming. Now that such assignments are possible, the challenged regulation permits the landlord the same access to that security as all other creditors of a tenant could obtain. In itself, this is neither manipulation nor an unfair diversion of funds, and

the existing regulations provide the necessary safeguards against the possibility that the access thus provided will be abused.

CONCLUSION

For the reasons stated above, it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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APPENDIX

7 U.S.C. 1444(d)(10), 79 Stat. 1196 (1965) (Supp. IV, 1965–68), provides:

> The Secretary shall provide adequate safeguards to protect the interests of tenants and sharecroppers, including provision for sharing diversion payments on a fair and equitable basis under this subsection. * * *

7 U.S.C. 1444(d)(13), 79 Stat. 1196 (1965) (Supp. IV, 1965–68), provides:

> The provisions of section 590h(g) of Title 16 (relating to assignment of payments), shall also apply to payments under this subsection.

Section 8(g) of the Soil Conservation and Domestic Allotment Act, 52 Stat. 35 and 205 (1938), ~~16 U.S.C. 590h(g) (Supp. IV)~~ provides:

> (g) A payment which may be made to a farmer under this section, may be assigned, without discount, by him in writing as security for cash or advances to finance making a crop. Such assignment shall be signed by the farmer and witnessed by a member of the county or other local committee, or by the treasurer or the secretary of such committee, and filed with the county agent or the county committee. Such assignment shall include the statement that the assignment is not made to pay or secure any preexisting indebtedness. This provision shall not authorize any suit against or impose any liability upon the Secretary or any disbursing agent if payment to the farmer is made without regard to the existence of any such assignment. * * *

Section 8(g) of the Soil Conservation and Domestic Allotment Act, as amended, 80 Stat. 1167 (1966), 16 U.S.C. 590h(g) (Supp. IV, 1965–68), provides:

> (g) Assignment of payment; procedure for assignment; rules and regulations.
>
> A payment which may be made to a farmer under this section, may be assigned, without discount, by him in writing as security for cash or advances to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice. Such assignment shall be signed by the farmer and witnessed by a member of the county committee or by an employee of such committee, except that where the assignee is a bank whose deposits are insured by the Federal Deposit Insurance Corporation, the Farmers Home Administration, or a production credit association supervised by the Farm Credit Administration, such assignment may be witnessed by a bonded officer of the lending institution. Such assignment shall be filed with the county committee. Such assignment shall not be made to pay or secure any preexisting indebtedness. This provision shall not authorize any suit against or impose any liability upon the Secretary or any disbursing agent if payment to the farmer is made without regard to the existence of any such assignment. The Secretary shall prescribe such regulations as he determines necessary to carry out the provisions of this subsection.

20 Fed. Reg. 6511, 6512 (Sept. 3, 1955) provides:

> *Payment may be assigned to finance making a crop.* A payment which may be made to a farmer * * * under section 8 of the Soil Conservation and Domestic Allotment Act as amended, may be assigned only as security for cash or advances to finance making a crop for the current crop year. To finance making a crop means (a) to finance the planting, cultivating, or harvesting of a crop, including the purchase of

equipment required therefor; (b) to provide food, clothing, and other necessities required by the assignor or persons dependent upon the assignor; or (c) to finance the carrying out of soil or water conservation practices. Nothing contained herein shall be construed to authorize an assignment given to secure the payment of the whole or any part of the purchase price of a farm or the payment of the whole or any part of a cash or fixed commodity for rent for a farm.

31 Fed. Reg. 2815 (Feb. 17, 1966) provides:

1. The second sentence of * * * [20 Fed. Reg. 6511, 6512 as set forth above] is amended by inserting immediately before the semicolon at the end of paragraph (a) the following:

"and the payment of cash rent for land used therefor."

* * * * *

2. The last sentence of * * * [20 Fed. Reg. 6511, 6512 as set forth above] is amended by deleting the words "cash or".

32 Fed. Reg. 14921 (Oct. 28, 1967), 7 C.F.R. 709.3 (1968) provides:

Purposes for which a payment may be assigned.

(a) A payment which may be made to a producer under any program to which this part is applicable may be assigned only as security for cash or advances to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice, for the current crop year. No assignment may be made to secure or pay any preexisting indebtedness of any nature whatsoever.

(b) To finance making a crop means (1) to finance the planting, cultivating, or harvesting of a crop, including the purchase of equipment required therefor and the payment of cash rent for land used therefor, or (2) to provide food,

clothing, and other necessities required by the producer or persons dependent upon him.

(c) Nothing contained herein shall be construed to authorize an assignment given to secure the payment of the whole or any part of the purchase price of a farm or the payment of the whole or any part of a fixed commodity rent for a farm.

32 Fed. Reg. 2935 (Feb. 16, 1967), as amended, 32 Fed. Reg. 6127 (April 19, 1967) (7 C.F.R. 722.817, 794.3 (1968)) provides:

> [Diversion and price support payments] "shall not be approved for payment by the county committee if the county committee determines that any of the following conditions exist * * *.
>
> (1) The landlord * * * has not afforded his tenants and sharecroppers an opportunity to participate in the program;
>
> (2) The landlord * * * has, in anticipation of or because of participating in the program, reduced the number of tenants and sharecroppers on the farm * * *.
>
> (3) There exists between the * * * landlord and any tenant or sharecropper, any lease, contract, agreement or understanding unfairly exacted or required by the * * * landlord which was entered into in anticipation of participating in the program, the effect of which is:
>
> (i) To force the tenant or sharecropper to pay over to the landlord * * * any payment earned by him under the program;
>
> (ii) To change the status of any tenant or sharecropper so as to deprive him of any payment or right which he would otherwise have had under the program;
>
> * * * * *
>
> (iv) To increase the rent to be paid by the tenant or decrease the share of the crop or its proceeds to be received by the sharecropper * * *.

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